IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.687 OF 2006

In

ARBITRATION PETITION NO.398 OF 2005

M/s.Bharat Bijlee Limited : Appellant

(Orig.Petitioner)

V/s.

Union of India : Respondent

(Orig. Respondent)

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Mr.Gautam Ankhad i/b. M/s.Ashwin Ankhad and Associates for the appellant.

Ms S.I.Shah i/b. Mr.Pankaj Kapoor for the respondent.

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**CORAM : R.M.LODHA & S.A.BOBDE,JJ.**

DATE : NOVEMBER 14, 2006.

**P.C**.

We heard Mr.Gautam Ankhad, the counsel for the appellant.

2. Two-fold contention was advanced by him in challenging the impugned order. First, he submitted that the Arbitrator unjustifiably declined the appellant's prayer for leading oral evidence. He would submit that

the affidavit (examination-in-chief) was tendered to the Arbitrator, but the Arbitrator refused to take the same on record. Secondly, the counsel for the appellant urged that the Arbitrator, being the employee of the respondent, is biased.

3. The aforesaid two contentions were raised before the learned single Judge as well, but did not find favour with him. In our view also, there is no merit in any of the contentions. Regarding the first contention, we asked the counsel for the appellant to show us the affidavit that was tendered before the Arbitrator. The same was not shown. In the circumstances, it is very difficult to accept the case of the appellant that they wanted to lead oral evidence, but that was declined. As a matter of fact, there is nothing on record to support this submission.

4. As regards the second contention, suffice it to say that section 13 provides for the procedure for challenging the Arbitrator on the ground of bias. The counsel for the appellant agreed that the Arbitral Tribunal was constituted on 2.9.2004 and that the notice dated 4.10.2004 was admittedly received from the Arbitrator before 27.10.2004 as, on that date, the adjournment was sought on behalf of the appellant.

Written Statement raising the plea of bias of the Arbitrator was filed for the first time on 27.12.2004 which is apparently beyond 15 days after the appellant came to know of the constitution of the Arbitral Tribunal. In view thereof, the learned single Judge cannot be said to have erred in not entertaining the plea of bias. Besides that, it is an admitted position that the Arbitrator is named in the Arbitration Agreement.

5. For all these reasons, no case for interference in the impugned order is made out.

6. Appeal is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.